

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:	IKG/Harsco Corp.	)	
	a/k/a 4-J, LP	)	Davidson County
	Map 094-09-0, Parcel 6.00	)	
	Industrial Property	)	
	Tax Year 2007	)	

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$609,200	\$4,511,600	\$5,120,800	\$2,048,320

An appeal has been filed on behalf of the owner of record on January 1, 2007, Harsco Corp., by registered agent Patrick G. Price. An appeal has also been filed on behalf of the June 5, 2007 purchaser of subject property, 4-J, LP by registered agent Jay Catignani.

The undersigned administrative judge conducted a hearing in this matter on March 12, 2008 in Nashville, Tennessee. Pursuant to the agreement of the parties, the appeals were consolidated for hearing. In attendance at the hearing were registered agent Jay Catignani, Jenny L. Hayes, Assistant Metropolitan Attorney, and staff appraiser Derrick Hammond.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property consists of a 15.31 acre tract improved with a 254,342 square foot manufacturing/warehouse facility located at 860 Visco Drive in Nashville, Tennessee. Subject facility was originally constructed in 1968.

The appellants contended that subject property should be valued at a maximum of \$4,000,000 prior to equalization. In support of this position, the testimony and written analysis of Mr. Catignani was offered into evidence. Essentially, Mr. Catignani introduced into evidence sales comparison and cost approaches which he maintained support market value indications of \$4,000,000 and \$3,600,000 respectively. Mr. Catignani placed greatest weight on the sales comparison approach due to the age of subject property and the difficulty in quantifying accrued depreciation.

In addition to introducing sales comparison and cost approaches, Mr. Catignani offered proof concerning the marketing of subject property. Basically, subject property was first listed for sale on March 3, 2005 for \$5,575,000. Subject property was ultimately sold on June 5, 2007 for \$3,900,000.

The assessor moved for a directed verdict following Mr. Catignani's testimony. In support of this position, Ms. Hayes noted that Mr. Catignani's compensation is based on a



contingent fee arrangement. Alternatively, the assessor asserted that the current appraisal of \$5,120,800 should be affirmed based upon the presumption of correctness attaching to the decision of the Metropolitan Board of Equalization.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$4,000,000 prior to equalization based upon Mr. Catignani's analysis. This results in an equalized value of \$3,512,000 after application of the 2007 appraisal ratio for Davidson County of 87.8% as adopted by the State Board of Equalization.

Since the taxpayer is appealing from the determination of the Metropolitan Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the taxpayer unquestionably established a prima facie case. The administrative judge finds Mr. Catignani is a licensed appraiser and his analysis comported with generally accepted appraisal practices. The administrative judge finds that for all practical purposes none of Mr. Catignani's assumptions or conclusions were challenged by the assessor of property.



The administrative judge finds that for better or worse Tennessee allows registered agents to function as both witnesses and advocates. Moreover, it is common knowledge that many agents have contingent fee arrangements. The administrative judge finds that although such a method of compensation certainly reduces an agent's credibility, the State Board of Equalization has never ruled that such an arrangement standing by itself requires rejection of the agent's analysis.

The administrative judge finds that the adopted market value of \$4,000,000 must be reduced by Davidson County's 2007 appraisal ratio of 87.8% in order to maintain equalization. This conclusion stems from a finding that under the Constitution of the State of Tennessee, Article II, Section 28, the "ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the state." Equalization relief must be granted in order to comply with this constitutional mandate. This is also required by *Louisville and Nashville Railroad v. Public Service Commission*, 493 F.Supp. 162 (M.D. Tenn. 1978), the decisions of the State Board of Equalization in regard to public utility appeals since 1977, Tenn. Code Ann. § 67-5-601 and the decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (State Board of Equalization) (Davidson County, Tax Years 1991-1992).

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$609,200	\$2,902,800	\$3,512,000	\$1,404,800

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

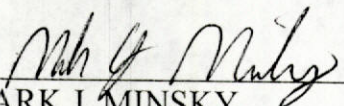
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or



2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of March, 2008.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Jay Catignani  
Mr. Patrick G. Price  
Jenny L. Hayes, Esq.  
Jo Ann North, Assessor of Property